REMARKS/ARGUMENTS

Reconsideration and allowance of this application are respectfully requested. Currently, claims 1-25 are pending in this application.

Rejection Under 35 U.S.C. §101:

Claims 1-25 were rejected under 35 U.S.C. §101 as allegedly being directed to non-statutory subject matter. Applicant respectfully traverses this rejection.

Each of the independent claims has been amended so as to be even more clearly directed to statutory subject matter. For example, independent claim 1 requires, *inter alia*, "calculating a charge for the network usage...." In *State Street Bank &Trust Co. v. Signature Financial Group, Inc.* 149 F.3d 1368, 47 U.S.P.Q.2d 1596, 1601 (Fed. Cir. 1998), the Federal Circuit held "that the transformation of data, representing discrete dollar amounts, by a machine through a series of mathematical calculations into a final share price, constitutes a practical application of a mathematical algorithm, formula, or calculation, because it produces 'a useful, concrete and tangible result' – a final share price...." Like the final share price in *State Street*, calculating a charge for network usage in claim 1 produces a useful, concrete and tangible result. Claim 1 is thus directed to statutory subject matter under 35 U.S.C. §101. The remaining pending claims are also directed to statutory subject matter for similar (but not necessarily identical) reasons.

Rejection Under 35 U.S.C. §112:

Claims 1-25 were rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

The Office Action alleges that "It is not clear whether the claimed limitation of network loading is the current status of the network congestion, or, loading of the data for transmission at the customer loading." Several claims have been amended to clearly indicate that network loading is indicative of the current status of the network congestion (i.e., essentially the first of the two options presented in the Office Action's comments). It is noted that independent claim 13 does not recite "network loading."

Claims 1-13 and 17-20 were rejected under 35 U.S.C. §112, second paragraph, as allegedly being incomplete for omitting essential steps. Similarly, claims 14-16 and 21-25 were rejected under 35 U.S.C. §112, second paragraph, as allegedly being incomplete for omitting essential elements. The Office Action alleges that the omitted steps/elements include "Making a decision at the customer terminal for based on the result of the comparison user-determined price criteria, and user-determined price criteria is compared with price calculated with the tariff. Tracking of user accepted price calculated with the tariff." Applicant respectfully disagrees with these allegations.

The above noted steps/elements do not form essential steps/elements. For example, a portion of the specification corresponding to the alleged missing step/element "Making a decision at the customer terminal for based on the result of the comparison user-determined price criteria, and user-determined price criteria is compared with price calculated with the tariff..." is page 3 line 16 *et seq.* which states "**Preferably**, the method includes programming a decision agent at the customer terminal with user-determined price criteria, and comparing a price calculated using the tariff with the said price criteria...(emphasis added)." The use of the term "preferably" in this portion of the specification clearly indicates that "Making a decision at the customer terminal for based on the result of the comparison user-determined price criteria, and user-determined price criteria is compared with price calculated with the tariff..." is not a mandatory, essential step/element (e.g., with respect to the invention required by the independent claims).

Moreover, a main goal of the present invention can be achieved without "Making a decision at the customer terminal for based on the result of the comparison user-determined price criteria, and user-determined price criteria is compared with price calculated with the tariff...." In particular, page 1 line 31 *et seq.* of the specification states "The present invention provides an approach to charging for network usage which involves little to no network overheads, and which moreover is able to reflect local variations in network loading. This is

achieved by detecting a measure of network loading at the customer terminal."

The explicitly stated goal of charging for network usage to reflect local variations

in network loading does not necessarily require "Making a decision at the

customer terminal for based on the result of the comparison user-determined price

criteria, and user-determined price criteria is compared with price calculated with

the tariff" and/or "Tracking of user accepted price calculated with the tariff."

These steps/elements are thus not necessarily essential (e.g., to the invention

required by the independent claims) as alleged by the Office Action.

Even further, <u>dependent</u> claim 8 explicitly requires "programming a

decision agent at the customer terminal with user-determined price criteria, and

comparing a price calculated using the tariff with the price criteria." Applicant

thus fails to see why claim 8 is also being rejected as allegedly omitting "Making a

decision at the customer terminal for based on the result of the comparison user-

determined price criteria..." as indicated by the Office Action. As can be seen by

the presentation of dependent claim 8, this step/element is not essential for the

invention required by base independent claim 1.

Applicant thus submits that claims 1-25 are in full conformance with 35

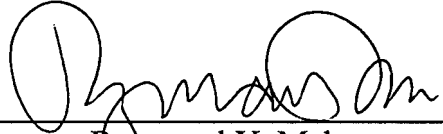U.S.C. §112.

Conclusion:

Applicant believes that this entire application is in condition for allowance

and respectfully requests a notice to this effect. If the Examiner has any questions

or believes that an interview would further prosecution of this application, the

Examiner is invited to telephone the undersigned.

Respectfully submitted,

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